

Environmental Protection Agency

§ 33.105

a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR part 121.

Small business in a rural area (SBRA) means a small business operating in an area identified as a rural county with a code 6-9 in the Rural-Urban continuum Classification Code developed by the United States Department of Agriculture in 1980.

Supplies means items procured under a financial assistance agreement as defined by applicable regulations for the particular type of financial assistance received.

United States means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico and any other territories and possessions of the United States.

Women's business enterprise (WBE) means a business concern which is at least 51% owned or controlled by women for purposes of EPA's 8% statute or a business concern which is at least 51% owned and controlled by women for purposes for EPA's 10% statute. Determination of ownership by a married woman in a community property jurisdiction will not be affected by her husband's 50 percent interest in her share. Similarly, a business concern which is more than 50 percent owned by a married man will not become a qualified WBE by virtue of his wife's 50 percent interest in his share.

73 FR 15913, Mar. 26, 2008, as amended at 79 FR 76054, Dec 19, 2014]

§ 33.104 May recipients apply for a waiver from the requirements of this part?

(a) A recipient may apply for a waiver from any of the requirements of this part that are not specifically based on a statute or Executive Order, by submitting a written request to the Director of the Office of Small and Disadvantaged Business Utilization.

(b) The request must document special or exceptional circumstances that make compliance with the requirement impractical, including a specific proposal addressing how the recipient intends to achieve the objectives of this

part as described in § 33.101. The request must show that:

(1) There is a reasonable basis to conclude that the recipient could achieve a level of MBE and WBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subparts C or D of this part;

(2) Conditions in the recipient's jurisdiction are appropriate for implementing the request; and

(3) The request is consistent with applicable law.

(c) The OSDBU Director has the authority to approve a recipient's request. If the OSDBU Director grants a recipient's request, the recipient may administer its program as provided in the request, subject to the following conditions:

(1) The recipient's level of MBE and WBE participation continues to be consistent with the objectives of this part;

(2) There is a reasonable limitation on the duration of the recipient's modified program; and

(3) Any other conditions the OSDBU Director makes on the grant of the waiver.

(d) The OSDBU Director may end a program waiver at any time upon notice to the recipient and require a recipient to comply with the provisions of this part. The OSDBU Director may also extend the waiver if he or she determines that all requirements of paragraphs (b) and (c) of this section continue to be met. Any such extension shall be for no longer than the period originally set for the duration of the program waiver.

§ 33.105 What are the compliance and enforcement provisions of this part?

If a recipient fails to comply with any of the requirements of this part, EPA may take remedial action under 2 CFR 200.338, Remedies for noncompliance, or 40 CFR part 35, as appropriate, or any other action authorized by law, including, but not limited to, enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*). Examples of the remedial actions under 2 CFR 200.338 or 40 CFR part 35 include, but are not limited to: